

Remarks:

Applicant has read and considered the Office Action dated January 28, 2010 and the references cited therein. Claims 8, 10 and 22 have been amended. Claims 8-25 and 28-29 are currently pending. Reconsideration is hereby requested.

In the Action, the prosecution was reopened following the Appeal Brief filed on November 9, 2009. Applicants are hereby filing a reply to this Office Action. Applicant notes that this is the second time that prosecution has been reopened regarding issues raised under § 112.

Claim 10 was rejected under 35 U.S.C. § 112, first paragraph. The Action states that the limitation "continuously crimped" is not supported by the original specification. The Action stated that it is new matter. Applicant respectfully traverses the rejection. Applicant notes that the specification clearly shows a machine that provides continuous crimping of the cover and the gutter. Applicant has provided a declaration by one of ordinary skill in the art clearly stating that the specification would be readily understood to provide continuous crimping of the gutter and cover together. Applicant asserts that one of ordinary skill in the art would readily understand from the specification as originally filed that the gutter and cover are continuously crimped along their entire length by the embodiment shown as all material passes through the crimping rollers. Applicant further notes that the views all show continuous crimping and that there are no gaps for other positions where the elements are not crimped. Applicant asserts that the rejection under 35 U.S.C. § 112, first paragraph, has been overcome and should be withdrawn.

Claim 10 was rejected under 35 U.S.C. § 112, second paragraph. The Office Action states that "continuous crimped" (sic) is indefinite as it is confusing. The Action states that continuous crimped has not been defined and it is not clear where the crimping begins and

ends. The claim has been amended to clarify that the crimping occurs along the entire length of the gutter and cover assembly. As discussed above, the specification as originally filed clearly shows that the crimping takes place for the entire assembly as it is continuously formed without any locations where crimping does not occur. The apparatus shown clearly shows that crimping must occur as all material is continuously fed through the crimping rollers with the device shown and all views clearly show that crimping does occur. Applicant asserts that the claim makes it clear where the crimping occurs. Applicant has also provided a Declaration that supports that one of ordinary skill in the art would readily understand what continuously crimping means. Applicant therefore asserts that the rejection under 35 U.S.C. § 112, second paragraph, has been overcome and requests that the rejection be withdrawn.

Claims 8, 11 and 13-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Knudson. Moreover, claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson in view of Middleby. Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson in view of Wade and Richard. Claims 9, 22, 24 and 28-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson in view of Beam. Finally, claims 23 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Knudson in view of Beam.

Applicant respectfully traverses the rejections. As previously discussed in response to prior Office Actions, the Office Action asserts that the Knudson reference shows that the elements are crimped together. Applicant continuously asserted that Knudson clearly states that the elements are removable and therefore cannot be crimped together. Applicant references the previous responses and Amendments. Moreover, Applicants have provided a Declaration by one of ordinary skill in the art who has reviewed the Knudson reference. The Declaration of Bradley P. Olson, who has 18 years of experience in the design of elements or products including gutter systems and has stated that one would not interpret Knudson as

having the elements crimped together. Moreover, the Declarant has reviewed the Office Action and has clarified that the Office Action is not characterizing Knudson together.

When properly construed, Applicant asserts that Knudson does not show crimping along the entire length as now recited in the claims. One of ordinary skill in the art would readily understand that the present invention provides a gutter cover system with the gutter and cover continuously crimped along their entire length. Moreover, this would not be obvious in view of Knudson, which clearly states that the cover is removable and that the elements are not crimped together. Applicant asserts that the rejection under 35 U.S.C. § 102(b) must therefore be withdrawn. Moreover, the other references cited and combined with Knudson under 35 U.S.C. § 103(a) fail to remedy the shortcomings of Knudson. Applicant therefore asserts that the claims rejected under 35 U.S.C. § 103(a) are also allowable for at least the reasons discussed above. Applicant therefore requests that the rejections under 35 U.S.C. § 103(a) be withdrawn.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicant's representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: _____

7/28/10

By: _____

Gregory A. Sebald
Reg. No. 33,280
GAS/krm